

Chief Judge Marsha J. Pechman

13-CR-00374-PLAGR

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
U.S. DISTRICT COURT
SEATTLE, WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JONATHAN PARK,

Defendant.

NO. CR13-374MJP

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and C. Andrew Colasurdo, Assistant United States Attorney for said District, and the defendant, Jonathan Park, and his attorney, Nancy Tenney, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. Waiver of Indictment. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

2. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters his plea of guilty to one count of Bank Fraud, in violation of 18 U.S.C. §§ 1344 and 2, as charged in the Information. By entering this plea of guilty, Defendant hereby waives all objections to

1 the form of the charging document. Defendant further understands that before entering
2 his plea of guilty, Defendant will be placed under oath. Any statement given by
3 Defendant under oath may be used by the United States in a prosecution for perjury or
4 false statement.

5 **3. Elements of the Offense.** Defendant understands that the elements of the
6 offense of Bank Fraud, in violation of 18 U.S.C. §§ 1344 and 2, as charged in Count 1 of
7 the Information, are as follows:

8 a. Defendant, together with others, knowingly devised and carried out a
9 scheme or plan to obtain money or property from a financial institution by making false
10 statements or promises;

11 b. Defendant knew that the statements or promises were false;

12 c. The statements or promises were material, that is they had a natural
13 tendency to influence, or were capable of influencing, a financial institution to part with
14 money or property;

15 d. Defendant and others acted with the intent to defraud; and

16 e. The financial institution was federally insured.

17 **4. The Penalties.** Defendant understands that the statutory penalties for the
18 offense of Bank Fraud, in violation of 18 U.S.C. §§ 1344 and 2, as charged in Count 1 of
19 the Information, are as follows:

20 a. Imprisonment for up to thirty years;

21 b. A fine of up to \$1,000,000.00;

22 c. A period of supervision following release from prison of up to five
23 years; and

24 d. A \$100.00 penalty assessment.

25 If Defendant receives a sentence of probation, the probationary period could be up to five
26 years. Defendant agrees that the special assessment shall be paid at or before the time of
27 sentencing.

1 Defendant understands that supervised release is a period of time following
2 imprisonment during which he will be subject to certain restrictions and requirements.
3 Defendant further understands that if supervised release is imposed and he violates one or
4 more of its conditions, he could be returned to prison for all or part of the term of
5 supervised release that was originally imposed. This could result in Defendant serving a
6 total term of imprisonment greater than the statutory maximum stated above.

7 Defendant understands that in addition to any term of imprisonment and/or fine
8 that is imposed, the Court may order Defendant to pay restitution to any victim of the
9 offense, as required by law. Defendant further understands that a consequence of
10 pleading guilty may include the forfeiture of certain property either as a part of the
11 sentence imposed by the Court, or as a result of civil judicial or administrative process.

12 Defendant agrees that any monetary penalty the Court imposes, including the
13 special assessment, fine, costs or restitution, is due and payable immediately, and further
14 agrees to submit a completed Financial Statement of Debtor form as requested by the
15 United States Attorney's Office.

16 **5. Rights Waived by Pleading Guilty.** Defendant understands that, by
17 pleading guilty, he knowingly and voluntarily waives the following rights:

18 a. The right to plead not guilty, and to persist in a plea of not guilty;
19 b. The right to a speedy and public trial before a jury of Defendant's
20 peers;

21 c. The right to the effective assistance of counsel at trial, including, if
22 Defendant could not afford an attorney, the right to have the Court appoint one for
23 Defendant;

24 d. The right to be presumed innocent until guilt has been established
25 beyond a reasonable doubt at trial;

26 e. The right to confront and cross-examine witnesses against Defendant
27 at trial;

1 f. The right to compel or subpoena witnesses to appear on Defendant's
2 behalf at trial;

3 g. The right to testify or to remain silent at trial, at which trial such
4 silence could not be used against Defendant; and

5 h. The right to appeal a finding of guilt or any pretrial rulings.

6 **6. United States Sentencing Guidelines.** Defendant understands and
7 acknowledges that, at sentencing, the Court must consider the sentencing range
8 calculated under the United States Sentencing Guidelines, together with the other factors
9 set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and
10 circumstances of the offense; (2) the history and characteristics of the defendant; (3) the
11 need for the sentence to reflect the seriousness of the offenses, to promote respect for the
12 law, and to provide just punishment for the offenses; (4) the need for the sentence to
13 afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect
14 the public from further crimes of the defendant; (6) the need to provide the defendant
15 with educational and vocational training, medical care, or other correctional treatment in
16 the most effective manner; (7) the kinds of sentences available; (8) the need to provide
17 restitution to victims; and (9) the need to avoid unwarranted sentence disparity among
18 defendants involved in similar conduct who have similar records. Accordingly,
19 Defendant understands and acknowledges that:

20 a. The Court will determine Defendant's applicable Sentencing
21 Guidelines range at the time of sentencing;

22 b. After consideration of the Sentencing Guidelines and the other
23 factors in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to
24 the maximum term authorized by law;

25 c. The Court is not bound by any recommendation regarding the
26 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
27 range offered by the parties or the United States Probation Department, or by any
28 stipulations or agreements between the parties in this Plea Agreement; and

1 d. Defendant may not withdraw a guilty plea solely because of the
2 sentence imposed by the Court.

3 **7. Sentencing Factors.** The parties agree and stipulate that the following
4 Sentencing Guidelines provisions apply to this case:

5 a. The base offense level is 7 because the offense of Bank Fraud is
6 punishable by 30 years of imprisonment (USSG § 2B1.1(a)(1));

7 b. A 12-level upward adjustment applies because the loss amount
8 exceeded \$200,000 (USSG § 2B1.1(b)(1)(G));

9 c. A 2-level upward adjustment applies because Defendant abused a
10 position of trust (USSG § 3B1.3); and

11 d. As explained in paragraph 14, a 3-level downward adjustment will
12 apply if the United States remains satisfied that Defendant has accepted responsibility for
13 his conduct (USSG § 3E1.1(a) and (b)).

14 The parties agree they are free to argue the application of any other provisions of
15 the United States Sentencing Guidelines. Defendant understands, however, that at the
16 time of sentencing, the Court is free to reject these stipulated adjustments, and is further
17 free to apply additional downward or upward adjustments in determining Defendant's
18 Sentencing Guidelines range.

19 **8. Sentence Recommendation.** The United States will recommend a term of
20 imprisonment no greater than the low-end of the Guidelines range.

21 **9. Ultimate Sentence.** Defendant acknowledges that no one has promised or
22 guaranteed what sentence the Court will impose.

23 **10. Statement of Facts.** The parties agree on the following facts in support of
24 Defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged
25 offense.

26 In early 2007 and continuing until on or about December 31, 2007,
27 Defendant and a co-schemer knowingly devised and executed a scheme and
28 artifice to defraud Pacific International (PI) Bank, and obtained moneys and

1 funds from PI Bank by means of materially false and fraudulent pretenses,
2 representations and promises in connection with a small business loan.

3 At the time the scheme and artifice was devised and executed, Defendant
4 was employed as a Business Development Officer (BDO) / Loan Officer
5 for PI Bank and the co-schemer was working as a Real Estate Agent with
6 RE/MAX. The small business loan issued by PI Bank, based on the
7 fraudulent representations made by Defendant and the co-schemer, was
8 used to purchase the Ballinger Way Market (BWM) a small parcel of land
9 and the gas station and mini mart occupying that parcel of land.

10 To execute the scheme and artifice to defraud, Defendant prepared and
11 submitted a small business loan application that included the following two
12 misrepresentations: (1) that a down payment had been made in the amount
13 of \$385,000, when in truth and in fact no such down payment had been
14 made; and (2) that the business/property had been appraised at \$2,100,000
15 when in truth and in fact the true appraised value was \$1,700,000.

16 Regarding the down payment, Defendant obtained a check from the named
17 buyer and used that check to make it appear as though the named buyer had
18 made a down payment in the amount of \$385,000, when in fact no such
19 down payment was made. To accomplish this, Defendant and the co-
20 schemer did the following: (1) Defendant obtained a signed check from the
21 named buyer in the amount of \$385,000, (2) Defendant copied the front of
22 the check and gave that copy to the co-schemer; (3) the co-schemer copied
23 the backside of a different check that had been processed and attached it to
24 a document with the copy of the named buyer's signed check for \$385,000
25 in order to make it appear as though the required down payment of
26 \$385,000 had been processed and deposited into escrow, when in fact no
27 money had changed hands, (4) the co-schemer gave Defendant the
28 document supporting this fabricated down payment, and (5) Defendant
included this document in the small business loan application that was
ultimately reviewed and approved by officials at PI Bank.

Regarding the appraisal, an appraiser with Newcastle Valuations appraised
the business/property at \$1,700,000. Upon receiving the appraisal,
Defendant and the co-schemer contacted the appraiser and asked him to
increase the appraised value from \$1,700,000 to \$2,100,000. When the
appraiser refused to increase his appraisal, Defendant forwarded a PDF file
version of the appraisal to the co-schemer and instructed the co-schemer to

1 alter it. The co-schemer then altered the appraisal by, among other things,
2 increasing the appraised value from \$1,700,000 to \$2,100,000, without the
3 permission or authorization of the appraiser. The co-schemer then returned
4 the altered/inflated appraisal back to Defendant, who included it in the
5 small business loan application that was ultimately reviewed and approved
6 by officials at PI Bank.

7 Ultimately, their misrepresentations, both singularly and collectively,
8 caused PI Bank to approve the small business loan and to disburse
9 \$1,859,300 in loan proceeds on December 31, 2007. The net loss suffered
10 by PI Bank was \$334,242.27. At all relevant times, PI Bank was a
11 federally insured financial institution.

12 **11. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement
13 the United States Attorney's Office for the Western District of Washington agrees not to
14 prosecute Defendant for any additional offenses known to it as of the time of this
15 Agreement that are based upon evidence in its possession at this time, and that arise out
16 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the
17 United States has agreed not to prosecute all of the criminal charges the evidence
18 establishes were committed by Defendant solely because of the promises made by
19 Defendant in this Agreement. Defendant acknowledges and agrees, however, that for
20 purposes of preparing the Presentence Report, the United States Attorney's Office will
21 provide the United States Probation Office with evidence of all relevant conduct
22 committed by Defendant.

23 **12. Waiver of Appeal.** Defendant is aware that 18 U.S.C. § 3742 gives the
24 right to appeal the sentence imposed, and that other federal statutes give Defendant the
25 right to appeal other aspects of the conviction. In consideration of the United States'
26 agreement to not prosecute Defendant for all the offenses supported by the facts in this
27 case and to recommend a sentence no greater than the low-end of the Guidelines range,
28 and on the condition that the Court imposes a custodial sentence that is within or below
the Sentencing Guidelines range that is determined by the Court at the time of sentencing,

1 Defendant knowingly and voluntarily agrees to waive the following rights to the full
2 extent of the law:

3 a. Any right conferred by 18 U.S.C. § 3742 to appeal the sentence
4 imposed by the Court, including any restitution order imposed;

5 b. Any right to appeal any aspect of his conviction, including any
6 pretrial suppression matters or other pretrial dispositions of motions and other issues; and

7 c. Any right to bring any collateral attack against his conviction or
8 sentence, except as it may relate to the effectiveness of legal representation.

9 Furthermore, this waiver does not preclude Defendant from bringing an
10 appropriate motion pursuant to 28 U.S.C. § 2241, to address the conditions of his
11 confinement or the decisions of the Bureau of Prisons regarding the execution of his
12 sentence.

13 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
14 attacking (except as to effectiveness of legal representation) the conviction or sentence in
15 any way, the United States may prosecute Defendant for any counts, including those with
16 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
17 Agreement.

18 **13. Restitution.** Defendant agrees to make restitution to PI Bank in the
19 amount of \$334,242.27. Defendant's restitution obligation shall be joint and several with
20 any other co-defendants later charged for their role in the criminal activity. Said amount
21 shall be due and payable immediately, and shall be paid in accordance with a schedule of
22 payments as set by the United States Probation Office and ordered by the Court.

23 **14. Acceptance of Responsibility.** The United States acknowledges that if
24 Defendant qualifies for an acceptance of responsibility adjustment pursuant to USSG
25 § 3E1.1(a), and if the offense level is sixteen (16) or greater, his total offense level should
26 be decreased by three (3) levels pursuant to USSG § 3E1.1(a) and (b), because he has
27 assisted the United States by timely notifying the authorities of his intention to plead
28

1 guilty, thereby permitting the United States to avoid preparing for trial and permitting the
2 Court to allocate its resources efficiently.

3 **15. Forfeiture.** Defendant agrees to forfeit to the United States immediately
4 all of Defendant's right, title, and interest in any and all property, real or personal that
5 was used, or intended to be used, in any manner or part, to commit or to facilitate the
6 commission of the charged offense, and any property constituting, or derived from, any
7 proceeds Defendant obtained, directly or indirectly, as the result of such offenses, that are
8 subject to forfeiture pursuant to Title 21, United States Code, Section 853, including the
9 following assets: a sum of money representing the proceeds obtained as a result of the
10 offense alleged in Count 1.

11 Defendant agrees to fully assist the United States in the forfeiture of the listed
12 assets and to take whatever steps are necessary to pass clear title to the United States,
13 including but not limited to: surrendering title and executing any documents necessary to
14 effectuate such forfeiture; assisting in bringing any assets located outside the United
15 States within the jurisdiction of the United States; and taking whatever steps are
16 necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted,
17 hidden, or otherwise made unavailable for forfeiture. Defendant agrees not to file a claim
18 to any of the listed property in any civil forfeiture proceeding, administrative or judicial,
19 which may be initiated.

20 Defendant further agrees to provide a truthful "proffer" or "statement" regarding
21 all of Defendant's assets and to make a full and complete disclosure of all assets in which
22 Defendant has any interest or over which Defendant exercises control and those which
23 are held or controlled by a nominee(s). Defendant further agrees to submit to a polygraph
24 examination on the issue of assets if it is deemed necessary by the United States.
25 The United States reserves its right to proceed against any remaining assets not identified
26 in this Plea Agreement, including any property in which Defendant has any interest or
27 control, if said assets, real or personal, tangible or intangible.
28

1 **16. Voluntaryness of Plea.** Defendant agrees that he has entered into this Plea
2 Agreement freely and voluntarily, and that no threats or promises, other than the
3 promises contained in this Plea Agreement, were made to induce his to enter his pleas of
4 guilty.

5 **17. Statute of Limitations.** In the event that this Agreement is not accepted by
6 the Court for any reason, or Defendant has breached any of the terms of this Plea
7 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
8 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
9 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
10 Agreement by Defendant is discovered by the United States Attorney's Office.

11 **18. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if he
12 breaches this Plea Agreement, the United States may withdraw from this Plea Agreement
13 and Defendant may be prosecuted for all offenses for which the United States has
14 evidence. Defendant agrees not to oppose any steps taken by the United States to nullify
15 this Plea Agreement, including the filing of a motion to withdraw from the Plea
16 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
17 Defendant has waived any objection to the re-institution of any charges that were
18 previously dismissed or any additional charges that had not been prosecuted.

19 Defendant further understands that if, after the date of this Agreement, Defendant
20 should engage in illegal conduct, or conduct that is in violation of his conditions of
21 release (examples of which include, but are not limited to: obstruction of justice, failure
22 to appear for a court proceeding, criminal conduct while pending sentencing, and false
23 statements to law enforcement agents, the Pretrial Services Officer, Probation Officer, or
24 Court), the United States is free under this Agreement to file additional charges against
25 Defendant or to seek a sentence that takes such conduct into consideration by requesting
26 the Court to apply additional adjustments or enhancements in its Sentencing Guidelines
27 calculations in order to increase the applicable advisory Guidelines range, and/or by
28 seeking an upward departure or variance from the calculated advisory Guidelines range.

1 Under these circumstances, the United States is free to seek such adjustments,
2 enhancements, departures, and/or variances even if otherwise precluded by the terms of
3 the plea agreement.

4 **19. Completeness of Agreement.** The United States and Defendant
5 acknowledge that these terms constitute the entire Plea Agreement between the parties.
6 This Agreement only binds the United States Attorney's Office for the Western District
7 of Washington. It does not bind any other United States Attorney's Office or any other
8 office or agency of the United States, or any state or local prosecutor.

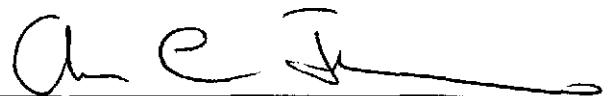
9 Dated this 27th day of November, 2013.

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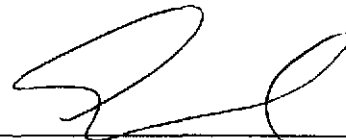
13 JONATHAN PARK
14 Defendant

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17 NANCY TENNEY
18 Attorney for Defendant

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21 ANDREW C. FRIEDMAN
22 Assistant United States Attorney

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25 C. ANDREW COLASURDO
26 Assistant United States Attorney